

ESTATE OF JOHN YAZZA ANTONIO

IBIA 83-31

Decided February 29, 1984

Appeal from a March 16, 1983, order issued by Administrative Law Judge Patricia McDonald, which denied reopening of Indian probate No. 7574-43 (IP GA 86G 83).

Vacated and remanded.

1. Indian Probate: Reopening: Generally

The failure of the Bureau of Indian Affairs to seek reopening of at closed Indian probate estate when it has information indicating some likelihood that a probate decision is incorrect is manifest error.

APPEARANCES: Richard W. Hughes, Esq., and Judy A. Flynn-O'Brien, Esq., Albuquerque, New Mexico, for appellant. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On May 12, 1983, the Board of Indian Appeals (Board) received a notice of appeal from a March 16, 1983, denial of reopening in the estate of John Yazza Antonio (decedent). The notice of appeal, which was filed with Administrative Law Judge Patricia McDonald by appellant Sandra A. Bohling, was forwarded to the Board by the Administrative Law Judge. For the reasons discussed below, the Board finds that reopening of this estate should be granted and remands the case to the Administrative Law Judge.

Background

Decedent, Ramah Navajo Allottee No. 060592, died intestate in January 1942, at the age of 25. A hearing to probate decedent's Indian trust estate was held by a Departmental Special Examiner of Inheritance on August 7, 1942. Both the testimony at that hearing and the family history data sheet prepared by the Bureau of Indian Affairs (BIA) indicated that decedent had never married and had no children.

By decision dated March 22, 1943, the Assistant Secretary of the Department of the Interior determined that, in accordance with the laws of the State of New Mexico, decedent's estate should be distributed to his four sisters; two brothers; adopted sister; three adopted brothers; and niece, the daughter of a predeceased sister.

On October 3, 1967, the 1943 order determining heirs was modified to include certain property erroneously omitted from the inventory of decedent's trust property. By letter dated March 8, 1983, the Superintendent of the Ramah Navajo Agency, BIA, forwarded to the Administrative Law Judge appellant's present petition to reopen decedent's estate. Appellant alleges that she is decedent's natural daughter. The BIA letter transmitting the petition states that there "appears to be sufficient grounds for petitioning a reopening."

The Administrative Law Judge denied reopening on March 16, 1983, for two reasons. First, the order found that appellant lacked standing to petition to reopen under 43 CFR 4.242(h) because she received notice of the original probate hearing through constructive notice to her mother and stepfather. Second, the Administrative Law Judge found that appellant had not shown she had diligently pursued the case since reaching her majority in 1961.

Appellant sought review of this order by the Board and filed an opening brief in support of her appeal.

### Discussion and Conclusions

The administrative record in this appeal contains a note dated April 29, 1958, which apparently was not before the Administrative Law Judge when she denied reopening. The note shows that BIA knew that decedent had been married and had a child. The note further shows that the agency knew the child's mother's name and address, and the child's approximate age and whereabouts. This knowledge predated the 1967 amendment of the order determining heirs to add omitted property.

[1] The BIA has a responsibility to seek reopening when it has information indicating some likelihood that a probate decision is incorrect. See Estate of Helen Ward Willey, 11 IBIA 43, 47 (1983), and cases cited therein. Here, BIA had such information and failed to act on it. Such failure is manifest error.

Under 43 CFR 4.320, the Board has the inherent authority of the Secretary to correct manifest error. This is an appropriate case in which to exercise that authority. 1/

Accordingly, pursuant to the authority delegated the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1 and 4.320, the March 16, 1983, decision of the Administrative Law Judge denying reopening of this estate is vacated and the case is remanded for reopening and determination on the merits.

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Bernard V. Parrette  
Chief Administrative Judge

We concur:

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Franklin D. Arness  
Administrative Judge

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Jerry Muskrat  
Administrative Judge

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1/ Because of this ruling it is unnecessary for the Board to reach the question of whether appellant's petition should have been granted on its own merits.